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International Court of Justice

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SUBMISSION OF AFFIDAVITS BY THE DEFENSE PURSUANT TO THE ORDER OF THE TRIBUNAL DATED 5 JULY 1946.

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(THE COMMISSION CONVENED AT 1020 HOURS.)

16 July, 1946.

COMMISSIONER:

Colonel A. M. S. Neave.

THE GENERAL STAFF.

COLONEL NEAVE: Dr. Laternser, will you explain briefly your plan regarding the summarizing of the affidavits?

DR. LATERNSER: I separatedthe affidavits, according to their specific points and within these points the affidavits are numbered consecutively. I have combined these affidavits in a written statement, which I want to read into the record. I am not too anxious to have the entire thing read into the record if the prosecution admits these things will be placed in the record, however, the entire statement has to be in the transcript and will have to be translated for the English transcript. I have a few Documents, which I would ask to have translated. I expect to request this translation only in a very few instances. If the method that I propose is followed, the entire work of a few months can be taken care of in a short time. This is what I propose and in this way I will be able to present my affidavit material in the shortest possible time. The main thing, however, is that the entire summary appears later on in the German and English

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transcripts in their entirety.

COLONEL NEAVE: I think that is a good suggestion, Dr. Laternser, but will you adopt the following procedure? Will you state first the number of affidavits the summaries of which you will read, then you read the summary and then I shall ask the prosecution if they have any objections. Do you have the copies of the original affidavits with you?

DR. LATERNSER: I am sorry, but I do not.

COLONEL NEAVE: Why not?

DR. LATERNSER: I am ready to take back these documents after they have been submitted and have them copied as time goes by.

COLONEL NEAVE: You will have to put the originals before the Commission. Do you have the originals with you?

DR. LATERNSER: Yes.

COLONEL NEAVE: As it is necessary and because you have not been able to get copies, we can let Dr. Kempner look at the originals.

DR. LATERNSER: Yes.

COLONEL NEAVE: When you finish your summary of an affidavit, you can hand me the original to read and I will give it to Dr. Kempner. Dr. Kempner, did you agree to this?

DR. KEMPNER: Yes.

COLONEL NEAVE: When you read the summary and the prosecution has time to examine the affidavit, it will be decided if the commission will accept the affidavit. You may proceed, Dr. Laternser.

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DR. LATERNSER: I will give the Commission Volume 1 of the affidavits concerning the Commi~~ser~~ ANDO Order. I wish to propose that the text concerning these affidavits be read into the record.

COLONEL NEAVE: The proposal that I made pertains to the order of the Tribunal dated July 5th and that is that the defense counsel read out a summary and then submit the original document, but apparently Dr. Laternser you are proposing to do something else.

DR. LATERNSER: I wish that the summary of the entire matter appear in the record, because that is the only way it will be possible for me to do it.

COLONEL NEAVE: It is much the better way for you to read the summary, document by document, so we will be given a chance to comment on it. What you are going to do is to put the whole of the text in the record and have it translated and then you will say something else as well in the record. I think Dr. Kempner will agree that we can read out the summary here and the prosecution can raise any objections it desires. All you need to do is to read out the summary and when you come to the end of the summary of a particular document, I will ask the prosecution if they have any comment. If the commission is not clear as to the relevancy of the document, they will ask you and decide whether they will admit it. Is that alright with you, Dr. Kempner? Let us get on with the procedure, which is the procedure laid down by the Tribunal and let us stick to that procedure.

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DR. LATERNSER: This method will be much longer and I wanted to prevent that.

DR. KEMPNER: The procedure stated by Colonel Neave is much the best procedure, otherwise, we would not know what was in the affidavits.

COLONEL NEAVE: The procedure has worked quite well. The first affidavit GENERAL STAFF NO. 301-A - GENERAL WARLIMANT. Will you read that, Dr. Laternser?

DR. KEMPNER: May I make a suggestion? It might be better if this is read as it stands.

COLONEL NEAVE: Will you read the summary as it is written and not paraphase it andif we are to have a discussion on it, we can have that afterwards.

DR. LATERNSER: I present this Document GENERAL STAFF NO. 301-A, which shows the opinion against the order in the OKW and the OKH and the fruitless attempts made to prevent this order entirely.

COLONEL NEAVE: I think, Dr. Laternser, you might read the preface to this summary, which begins with the first line, the "Kommisarbefehl". Will you read the first two sentences?

DR. LATERNSER: I am just trying to think it over.

COLONEL NEAVE: Is there any possible objection to reading that in the record? It is merely explaining the affidavits concerning the Commisar order. Will you mind reading it?

DR. LATERNSER: The Kommisarbefehl is an act, which this supposed group has been accused of as being in violation of international law and the rights of humanity. This proves clearly through the statements of

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witnesses before the commission, which concerned itself with the eastern and southeastern battle fields and which I will support by further affidavits about which I present the commission with a total of eighty two affidavits.

DR. KEMPNER: I draw your attention to the letter on the last page.

DR. LATERNSER: I did not refer to the letter on the last page.

COLONEL NEAVE: Well, it is there and I do not know why we should not refer to it.

DR. LATERNSER: I do not present this letter as an affidavit, but as a Document and it is one of the very few special cases.

COLONEL NEAVE: You are not supposed to present documents. At the moment we are deciding upon affidavits. Do you want to withdraw that letter from the affidavit?

Does that mean the Zeitzler letter is withdrawn?

DR. LATERNSER: Yes, if I cannot present it to the commission in this connection, I will have to recall it.

COLONEL NEAVE: I did not say that you should do so, I asked if you wished to do so. I merely stated that the purpose of this commission is to accept affidavits. I wanted to know if that letter from Zeitzler was not better in your document book.

DR. KEMPNER: This is O.K., but we reserve the right to cross-examine or put in an interrogatory.

COLONEL NEAVE: Dr. Kempner, I consider you have the right to discuss the procedure you are going to adopt on behalf of the prosecution.

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DR. KEMPNER: Especially since we have only the German original transcripts.

COLONEL NEAVE: The same applies to all affidavits. You have the right to ask that they be translated and it will be at the discretion of the commission to say.

The commission will admit this affidavit as GENERAL STAFF No. 301 - A.

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COLONEL NEAVE: Now, Affidavit General Staff No. 302-B, which is the letter from Zeitzler. You say you are going to withdraw it? Is that right?

DR. LATERNSER: Yes.

COLONEL NEAVE: May I look at it once more?

DR. LATERNSER: I recall this letter here before this commission, however, I reserve the right to present it in my document book. I only presented it in order to clear the entire complex.

COLONEL NEAVE: First of all, it is not an affidavit. It is only a letter to you and the question is whether it goes into the Document book or not.

DR. KEMPNER: Is that from Colonel General Zeitzler? Is he a prisoner of war now or what is he?

DR. LATERNSER: Yes, he is a general and he is a British prisoner of war and is in the hospital in Odenborg in Munich.

COLONEL NEAVE: Let us not waste more time. This has nothing to do

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with the proceedings of the Commission at all. Whether it goes in the Document book or not is a matter to be decided by the Tribunal. Will you go on Dr. Laternser?

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DR. LATERNSER: Concerning the positions of the commanders in chief on the front, which were considered as part of this group by the prosecution, I will present the following affidavits in order to give a clear picture.

Affidavit GENERAL STAFF NO. 302 by Colonel General Hoth, which states that he did not pass on this order and therefore presented the carrying out of this order by his Panzer group.

COLONEL NEAVE: First of all, why is the affidavit not properly sworn to? It is dated June 16th?

DR. LATERNSER: Due to the long time in getting mail and the poor communications system, this affidavit is presented in the manner as requested at that time by the Tribunal.

COLONEL NEAVE: It bears the signature of an allied officer. I don't know what you mean, Dr. Laternser. This is written from the prisoner of war camp at Dachau, which has been fully informed as to the order, however, if the prosecution does not object, we will let that go.

DR. KEMPNER: This is just like an affidavit.

COLONEL NEAVE: It is not certified, although it has the signature of an allied officer on it.

DR. KEMPNER: It is only signed by this man.

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COLONEL NEAVE: The position is this. It is agreed that the commission should make exceptions to the order of May 9th wherein it was agreed that the affidavits were signed by an allied officer ~~or~~ if there was some difficulty in carrying out the order, such as if the order could not be communicated.

DR. KEMPNER: So far as the contents are concerned, I have no objection. If the court is satisfied with the form, we are satisfied with it.

COLONEL NEAVE: The commission will admit this affidavit - GENERAL STAFF NO. 302.

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DR. LATERNSER: I next come to Document GENERAL STAFF NO. 304 by Colonel General Guderian, at that time leader of an armored group. He states that the order was not passed on in his area and therefore it was not carried out.

DR. KEMPNER: We have no objections.

COLONEL NEAVE: The commission will admit this affidavit as GENERAL STAFF NO. 304.

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DR. KEMPNER: Where is GENERAL STAFF NO. 303, it was passed completely?

DR. LATERNSER: No, I did not present this affidavit as it only has a certified signature.

COLONEL NEAVE: Why did you not have this affidavit submitted in the proper way. That was done in the prison here and there is no reason why

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it should not be presented in the proper form. The prison officials here have been fully informed as to how this should be done. Where is the witness now?

DR. LATERNSER: In England.

COLONEL NEAVE: You might like to ask Dr. Kempner about this. I would like to say at the time this affidavit was prepared the prison office here and everybody concerned was instructed as to how these affidavits should be certified. I cannot understand why, Dr. Laternser, you did not arrange for this to be done here.

DR. KEMPNER: I cannot accept this affidavit. We do not know the first name of this man and there is no proper identification.

COLONEL NEAVE: Dr. Laternser, will you speak to me about this affidavit afterwards? We will see if we can get this affidavit sworn to if you think it is important.

DR. LATERNSER: That Colonel General von Falkenhorst did not pass on the order was already proven before the court by the witness Buschenhagen, whom I questioned before the commission.

COLONEL NEAVE: Then you will not be wanting this affidavit?

DR. LATERNSER: No, I will not need it.

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DR. LATERNSER: Document GENERAL STAFF NO. 305 is next and it is by Field Marshall von Weichs, who testified that he took over the high command of the second army only ten to fourteen days after the beginning of the war. He found an order to go around the Commando order that the commandos were to be treated like regular prisoners of war. Since

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he was of the same opinion as his predecessors, he admitted this order and kept it in effect. That is Affidavit GENERAL STAFF NO. 305.

COLONEL NEAVE: How many more affidavits do you have on this subject?

DR. LATERNSER: I have concerning this special case 82 affidavits.

COLONEL NEAVE: And all of these affidavits relate to the same thing?

DR. LATERNSER: They are all concerned with the Commando order, but not all with the same thing.

COLONEL NEAVE: I was not clear that they all pertained to the Commando order. How many affidavits on other subjects will you present?

DR. LATERNSER: I cannot say that exactly by number.

COLONEL NEAVE: You wish to produce eighty two affidavits on this one subject?

DR. LATERNSER: I have to insist on this many documents in this case, Mr. President, for several reasons.

COLONEL NEAVE: I want to speak to Dr. Kempner. All of these affidavits are on the Commando order. I don't know if you understood that this was the case or not. They all relate to this order.

DR. KEMPNER: We think that five affidavits are enough on this point. I glanced at them and they are all the same. Either one says he did not know of the Commando order, or he knew of it and the order was sabotaged. We are not interested in details as they all followed the same trend and the people either say we did not know of the order or we sabotaged the order, which is their own defense of course.

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COLONEL NEAVE: Dr. Laternser, will you wait one moment? The answer to this is quite simple, we will deal with the problem the same as we dealt with the affidavits of other organizations. The affidavits which Dr. Laternser considers as particularly important should be given to us now by their numbers and those which he desires to have translated. The remainder of the list will be translated and will be read into the record at a later date. That will mean that a small number of these affidavits will be summarized or completely translated and the rest will simply be listed under the heading as showing they are relevant to the affidavits which have been read in the record. We found that procedure successful in the case of the SS Reitersturm where a very large number of affidavits were submitted. The position is that we will adopt that procedure if Dr. Laternser will give us the numbers now of those affidavits, which he considers particularly important. I understand that there are not very many. I agree with you that there is no point in reading them all into the record if they are all on the same subject. That was what I did not understand. Will you inform us which are the affidavits which you want fully translated and any others which you particularly wish read in summary form in the record.

DR. LATERNSER: I have to state something here quite specifically since it is important for later procedure.

COLONEL NEAVE: Yes.

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DR. LATERNSER: The Commissar Order did not come from the accused group that is accused of it. This group can only be accused of it, if it was carried out. I want to prove that this order was not carried out. It is not correct if it is stated that every document or affidavit, which I present, proves the same thing, becaus it is always something different if a different General did not carry it out.

COLONEL NEAVE: What you say is perfectly clear, but we will not admit eighty two affidavits on this same question in the same order, excepting insofar as we are prepared to summarize or translate those to which you attach particular importance. We are prepared to list the others and show they are also on the same subject. We will naturally receive the original documents, but it is impossible in the limited time to translate or even summarize eighty two affidavits in principle, which are on the same subject. I think, as in the case of the SS Reitersturm, the prosecution will possibly be able to accept your word that they are confirmatory of the particular affidavits.

Will you go on, as I ask, and tell us which are the most important of these affidavits?

DR. LATERNSER: Mr. President, can we not use the procedure which was proposed by me at the beginning of this session as we would be finished in fifteen minutes? I present all the documents to the prosecution to have them checked and my prepared speech is shown in the transcript?

COLONEL NEAVE: I think the prosecution would like to discuss in some detail those affidavits, which you actually wish to summarize for translation. That is the whole purpose of this commission, that won't take very

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long. We will then make up a list of the others, which will be forwarded to the Tribunal and the general subject of them will be recorded in the transcript. It should not take very long as I gather there are not very many that you consider should be fully translated or summarized. Will you tell us which they are?

DR. LATERNSER: I stated already in the beginning I have only three documents concerning this complex, which I wanted to have read in their entirety. However, the basic requirement for that is that I am allowed to give you the summary of the list of documents.

COLONEL NEAVE: I don't think we will agree to that exactly. What we want to have first is the number of the documents you want fully translated. Can we have those first?

DR. KEMPNER: Can we have a short recess for five minutes so that Dr. Laternser can pick out his most important documents?

COLONEL NEAVE: I think he has that.

DR. LATERNSER: I know these documents.

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DR. LATERNSER: The Documents are GENERAL STAFF 324-A, General Staff 324 B and General Staff 324 C. These concern themselves with one special complex, which was given by the Russian prosecution as part of the indictment. Then, Documents ~~XXXXXXXXX~~ GENERAL STAFF 333 AND GENERAL STAFF 336.

COLONEL NEAVE: Is that all?

DR. LATERNSER: That is all, however, I can only limit it to this

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number if I can give the other Documents in the way I want them to be given.

DR. KEMPNER: We object to this procedure.

COLONEL NEAVE: This procedure will not be allowed. Will you tell the commission which of the affidavits you would like to have summarized now and read into the record. I prefer to have the summary on the list we have here.

DR. LATERNZER: AFFIDAVITS GENERAL STAFF 306 AND GENERAL STAFF 316. Both concern themselves with the same aspect. These affidavits state that Colonel General Strauss, the commander in chief of the 9th Army, did order that this Commando Order be not carried out and that commandoes should be treated like other prisoners of war. That is all I have to propose concerning these two documents.

COLONEL NEAVE: We would like a summary read into the record.

DR. LATERNSER: No, these two are finished.

COLONEL NEAVE: The question I asked you was, are there any other affidavits which you expressedly wish to have read into the record in summarized form? I am not asking you to fully translate the affidavits.

DR. LATERNSER: I want to summarize all of the Documents the way I summarized them on this paper.

COLONEL NEAVE: The commission will not agree to your doing that. I told you that already. You are not going to summarize 82 affidavits on the same subject as I have already told you. What we are going to do is to fully translate some of the affidavits, to summarize a limited numder of others, in addition to those we have already had, and if you wish, we will

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take the remaining affidavits and simply list them and forward the list to the Tribunal with the rest of them. That procedure is perfectly in accord with the Tribunal's order of July 5th and I wish that you would adhere to it.

Is the procedure agreeable to the prosecution?

DR. KEMPNER: Yes.

COLONEL NEAVE: Will you kindly follow that procedure, Dr. Laternser and tell us whether there are any other affidavits in addition to those, which have already been read, which you wish summarized and read and state those you wish to have fully translated. You said there were four or five and you may have a few more in addition to those, which are to be fully translated.

DR. LATERNSER: I will give those after the recess.

COLONEL NEAVE: Let us discuss those which are not fully translated. First, GENERAL STAFF 324-A. Can I see that Affidavit?

(THE AFFIDAVIT GENERAL STAFF 324-A IS HANDED TO COLONEL NEAVE.)

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COLONEL NEAVE: Would you like to submit 324-A,B and C,and also 333. I think I have 324 A,B and C here.

DR. LATERNSER: Yes.

COLONEL NEAVE: And 333.

DR. LATERNSER: Yes.

COLONEL NEAVE: May I have that now.

DR LATERNSER: That is to be in a day or two.

COLONEL NEAVE: The Commission will now adjourn for a ten minute recess,but before we do that,Dr. Laternser, I would like to know that the order here which lays down this procedure is perfectly clear,that it gives the prosecution and the Commission the opportunity to comment on the affidavits,and I wish you would adhere to that procefure. We found it worked very well in the case of the organizations,and I don't see why it would not in this.

DR. LATERNSER: I believe we could have finished that with the documents.

COLONEL NEAVE: I believe that we shall be finished very shortly, but I wish you would adhere to that procedure. All right,we will adjourn now for ten minutes.

(recess)

COLONEL NEAVE: Now I have no objection to the submission of the ~~offer of~~ these affidavits,but before any final decision is made, I would like for the Prosecution to read them. They are not very long.

DR. KEMPNER: I have no objection against 336. No objection against 333.

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COLONEL NEAVE: A B and C, that is, 336 has got three parts.

DR. KEMPNER: No, that is 324.

COLONEL NEAVE: Yes, that is right.

DR KEMPNER: I do not quite understand 324-C. This is an affidavit by a Major Koblaue of the group.

COLONEL NEAVE: May I hear what the objection is?

DR. KEMPNER: I donot see his relationship to this hearing.

DR. LATERNSER: In order to clarify this I can say the following.

COLONEL NEAVE: Wait a minute. The objection is that this Major is not in the group of the general staff. Any person can give evidence on behalf of an organization, whether or not he is technically a member under the indictment.

DR KEMPNER: Under this evidence we have no objection.

COLONEL NEAVE: Therefore, I will hear from Dr Laternser.

DR. LATERNSER: I say that these documents are to the contrary as evidence against document USRR 62, which was presented by the Russian Prosecution.

COLONEL NEAVE: Then they seem to be entirely relevant,and they will, therefore, be translated,and distributed to the Tribunal. Now the next question I'll ask you is whether you had any other affidavits which summaries you especially want to read into the record. You said 306 and 316.

DR. LATERNSER: Yes.

COLONEL NEAVE: Would youlike to read the summary of General Oberst Strauss?

DR. LATERNSER: I am will to but I read it.

COLONEL NEAVE: Is that so. He read 306?

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DR LATERNSER: Yes.

COLONEL NEAVE: What about 316, you have not read that?

DR LATERNSER: The statement of Major Beckmann supports the statement of Colonel General Strauss, and not document 306.

COLONEL NEAVE: Have we got the original. Now are there any others you wish to read into the record in summary form.

DR LATERNSER: Affidavits 307, 308, 309 and 310.

COLONEL NEAVE: Any others? You are not reading a whole list?

DR LATERNSER: Yes, and 311 .

COLONEL NEAVE: I want those which are of particular importance, and to which you wish to draw the particular attentions of the Judges; any you want to summarize.

DR. KEMPNER: There is one affidavit, 306, in that the man tells clearly what he thinks about these affairs. Then we have additional affidavit in there where the officer tells of the officer number one and quotes him so. I think that is really overloading of the record. If we have to have the affidavit of one man to tell us the man who gave this affidavit "Told me so," that is then that the witness is to say that or the affidavit, and not the two.

COLONEL NEAVE: In practice, Dr Kempner, you see we have only got a very brief summary here under 306, and under 316, and they have had it read for the record. On that condition I don't think there is any point in ruling out 316, if Dr. Kempner wishes to put it in.

DR. LATERNSER: Document No. 307 is of Colonel General Lindemann, who stated he did not receive an order, and, therefore, did not carry it out. That is the entire contents.

COLONEL NEAVE: This is considered particularly important?

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DR. LATERNSER: Yes.

COLONEL NEAVE: Is there any question ~~assigned~~ here as to whether Dr Laternser should read the summary stated in this case read into the record?

DR. KEMPNER: We have no objection. It is accummulative but we have no objection.

COLONEL NEAVE: I think ~~it is of~~ the question of cummulative evidence ~~as is~~ has already ~~stated~~ been discussed before in this Commission. ~~Rather it relates to this procedure, and~~ We have got to allow the defense as wide and representative a field as possible , but we must avoid actual repetition. Now in this particular case I think this affidavit is of some interest, provided this is the only one that we read into the record in which he states exactly this fact, he did not receive the order so he did not carry it out. So Dr. Laternser you read your summary at the top of page 2 of the affidavit.

DR. LATERNSER: I have done that already.

CONONEL NEAVE: Has he read it? He has not read the full text, has he?

DR. LATERNSER: I even summarized this text.

COLONEL NEAVE: That is what I want, I want what you have written down read. Will you please do it.

DR. LATERNSER: Colonel General Lindemann at the beginning of the campaign was the commanding general of the 50th Korps,did not receive this order since he was in OKH reserve position with his division, and, therefore, did not carry it out when later committed to battle. That is document 306.

COLONEL NEAVE: Will you do as I have asked you two or three times. ~~Always you~~ Will you always read what is written in this text,and if any further dis- there are

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cussions, why, we can have that afterwards. Dr Kempner has requested that questioning should be done, and I don't see any reason why it should not. Then the affidavit is submitted, as General Staff 307. Now are there any other summaries you wish to read into the record?

DR. LATERNSER: Affidavit 308.

COLONEL NEAVE: How many more of these affidavits will you want to read into the record, in summary form?

DR. LATERNSER: In this case I shall go along according to the wishes of the court.

COLONEL NEAVE: You mean to say you can not tell me of any others you originally want to read? I am giving you an opportunity to do that, but in a very limited number.

DR. LATERNSER: Then Affidavit 308, which is by Field Marshall von Kuehler.

COLONEL NEAVE: In this case he did not receive the order, also.

DR. LATERNSER: Yes.

COLONEL NEAVE: That is exactly what 307 says. I just told you there should be no more nowhere you want affidavits on this question of whether the General received the order and did not carry it through.

DR LATERNSER: Yes.

COLONEL NEAVE: That is exactly what 307 says - that is what this document says.

COLONEL NEAVE: It is not what it says.

DR. LATERNSER: That is what the document says.

COLONEL NEAVE: Yes. Go on to the next one.

DR. LATERNSER: Affidavit 309. General von Knobelsdorff. General

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of the armored corps, von Knobelsdorff was at that time commander of the 19th Armored Division,and until the order had been presented by Hitler, Commanding General of the 10th and 2nd Armored Corps prohibited the carrying out ofthis order and took the responsibility for that. He certifies that the same procedure was used in areas of four general commands,and nineteen divisions.

COLONEL NEAVE: Well, you have heard the summary of that. Do you have any views on that?

DR. KEMPNER: No objection.

COLONEL NEAVE: Now are there any others. I don't see any point in taking up many more unless they raise particularly a different aspect. Would you just let myself and the Prosecution read through these lists, and see if anything theywould like their attention drawn to. (Looks at the list) I can not see anything else.

DR. LATERNSER: Nos. 311 and 317,which concern themselves on one point.

COLONEL NEAVE: Wait oneminute. Have you any comment on this, Dr. Kempner. You have heard it read in German, sodo you have any objection to it being read into the record. If there is any objection, then we will strike the German from the record.

DR KEMPNER: No, it is just another document saying that maybe no one was killed, anyhow.

COLONEL NEAVE: Well, translate it.

DR. LATERNSER: The action of the dead Field Marshall von Kluege at that time commanding chief of the 4th Armor,and that of the Field Marshall von Bock, who died in action,and who was at that time commander inchief of

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the Armored group Mitte, is proved by the statement of the commander of the 4th Armored at that time, general ofthe infantry Blumentvitt. This is affidavit 311. Both commander in chiefs did not approve of this order, and forbade it carried out. That is underlined by the statement by affidavit No. 317. From this it is evident that both commander in chiefs attempted to find ways even though they were not successful to bring about an order from Hitler rescinding this decree.

COLONEL NEAVE: We will admit this. I think it is sufficient. Let's take the final summaries of the many statements regarding affidavits that have been read and have admitted -- in other words, let's finally decide what affidavits we have read and have admitted. The first one I have is 301A - just correct me, Dr. Laternser, if I am mistaken.

DR. LATERNSER: Yes.

COLONEL NEAVE: 303 is withdrawn.

DR. LATERNSER: Yes.

COLONEL NEAVE: 304.

DR. LATERNSER: Yes.

COLONEL NEAVE: What happened to 305. I have 305.

DR. LATERNSER: Yes.

COLONEL NEAVE: 306 and 316.

DR. LATERNSER: Yes.

COLONEL NEAVE: 307.

DR. LATERNSER: Yes.

COLONEL NEAVE: 309. That is a criminal staff. The next one is 311.

DR. LATERNSER: That is correct.

COLONEL NEAVE: And 317.

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DR. LATERNSER: Yes.

COLONEL NEAVE: I mentioned 316, didn't I?

LATERNSER: Yes.

COLONEL NEAVE: Yes, they are together, 306 and 316. 324 A, B, and C, to be fully translated. 336 to be fully translated,and 333 to be fully translated.

DR. LATERNSER: Yes.

COLONEL NEAVE: Now with regard to the remaining affidavits, the Commission willbe prepared to admit those affidavits in their original form,but I would like you to submit lists with the numbers and the names of the witness,and a short heading as to their contents,but not a complete summary. If you think that is necessary merely to identify the document. Will you agree doing that?

DR. LATERNSER: Yes.

COLONEL NEAVE: Have you any comments, Dr. Kempher ?

DR. KEMPNER: No.

COLONEL NEAVE: Now when will you be ready to present more affidavits on the general staff.

DR. LATERNSER: I could present some more. However, they are all prepared in the same manner as the affidavits for the Kommissars decree.

COLONEL NEAVE: I think we have to treat them in the same way. Would you prefer to do that now, or would youlike to reorganize those summaries.

DR LATERNSER: I believewe will have to change it a little bit, after the way it has been done up to now.

COLONEL NEAVE: Dr Kempner,do you have any suggestions to make as to a different way of doing this, if you really are having affidavits on one particular point anyway. What in practice the Commission has done here is

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to admit about fifteen or twenty affidavits on this subject,but the list is about sixty. Have you any suggestions you wish to make dealing with this next lot of affidavits. Before you answer, could Dr. Laternser explain what point he is making on these.

DR. KEMPNER: How many topics are really still to be presented. I would like to know.

DR. LATERNSER: I have about eight to ten more themes, more points on which I would like to present documents.

COLONEL NEAVE: Roughly how many affidavits on each point?

DR. LATERNSER: Concerning all of these points, there will be surely three-hundred. I will treat the other points the same way as the Commissioner's order was dealt with today.

COLONEL NEAVE: In the opininn of the Commission I believe with the prosecution that it is a far better way of doing it as was done today. As a result we'll have the most important affidavits fully translated, those to which you wish to give special attention in summaries, such forms before read into the record, and the remainder are simply as being on the same subject. As a matter of fact when you submit lists of affidavits which have not as yet been read into the record,I don't see any reason why you should make a short statement as to what they can pertain; by way of recognition what they support or affirm of the evidence in those that have been read before the Commission, I don't think the prosecution would object to that, would they?

DR KEMPNER: No.

COLONEL NEAVE: Are you ready to follow that procedure or not? When will yoube ready to continue in the form that has been suggested?

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Will you be ready Friday?

DR. LATERNSER: Yes.

COLONEL NEAVE: Now Dr. Laternser has stated that six to ten different points he wishes to make. He has ~~gone over~~ mentioned three-hundred affidavits, and it is clear that we shall not be able to admit all three-hundred, or at any rate not to read into the record all three-hundred, even in a summarized form. So I think that if he wants to ask for say two or three to be fully translated for each point, and have five or six to be read into the record in summarized form, would he please offer us a summary in this form on the next occation, and read from this summary - only from this summary. We should get along quite quickly, then, and the remainder, of course, would be simply listed in the way I have suggested, with the form of statement by the defense counsel that the remaining affidavits, which would have numbers, of course, simply support or affirm the evidence that has been read. What I want to point out is the reason I objected to your original plan. I wanted to make the transcript clearer, and also I don't want to summarize all these affidavits on the same point. It would have taken a long time to translate them, even if that was done downstairs by the translation department and not up here, and, also it would not have served the purposes of this hearing, ~~just~~ which is to give the prosecution the opportunity to actually see and to comment on the affidavits in front of the Commissioners, and that the transcript of arguments that are raised should then be forwarded to the Tribunal. That is the whole purposes of this Commission. Have you anything more to say?

DR. LATERNSER: I have nothing more to say.

COLONEL NEAVE: But you will agree to that procedure?

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DR LATERNSER: Yes.

DR. KEMPNER: Yes, we agree and ask that also the defense will adhere to it.

COLONEL NEAVE: We will adjourn until two o'clock when we will take up the Political Leaders.

(The Commission adjourned until 17 July 1946 at 1000 hours)

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The foregoing is a true and correct transcript of Affidavits submitted by DR. LATERNSER, taken on 16 July 1946.

Alice Mahan
~~Commissioner~~ Reporter (pp 1-15

Charles J. Gallagher
Reporter (pp 16 - 24

CERTIFIED TO :

Commissioner

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SUBMISSION OF AFFIDAVITS BY THE DEFENSE
PURSUANT TO THE ORDER OF THE TRIBUNAL
DATED 5 JULY 1946.

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(THE COMMISSION CONVENED AT 1020 HOURS.)

COMMISSIONER:

Colonel A.M.S.Neave.

THE GENERAL STAFF.

COLONEL NEAVE: Dr. Laternser, will you explain briefly your plan regarding the summarising of the affidavits?

DR. LATERNSER: I separated the affidavits, according to their specific points and within these points the affidavits are numbered consecutively. I have combined these affidavits in a written statement, which I want to read into the record. I am not too anxious to have the entire thing read into the record if the prosecution admits these things will be placed in the record, however, the entire statement has to be in the transcript and will have to be translated for the English transcript. I have a few Documents. which I would ask to have translated. I expect to request this translation only in a very few instances. If the method that I proposed is followed, the entire work of a few months can be taken care of in a short time. This is what I propose and in this way I will be able to present my affidavit material in the shortest possible time. The main thing, however, is that the entire summary appears later on in the German and English transcripts in their entirety.

COLONEL NEAVE: I think that is a good suggestion, Dr. Laternser, but will you adopt the following Procedure? Will you state first the number of affidavits the summaries of which you will read, then you read the summary and then I shall ask the Prosecution if they have any objections. Do you have the copies of the original affidavits with you?

DR. LATERNSER: I am sorry, but I do not.

COLONEL NEAVE: Why not?

DR. LATERNSER: I am ready to take back these documents after they have been submitted and have them copied as time goes by.

COLONEL NEAVE: You will have to put the originals before the Commission. Do you have the originals with you?

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DR. LATERNSER: Yes.

COLONEL NEAVE: As it necessary and because you have not been able to get copies, we can let Dr. Kempner look at the originals.

DR. LATERNSER: Yes.

COLONEL NEAVE: When you finish your summary of an affidavit, you can hand me the original to read and I will give it to Dr. Kempner. Dr. Kempner, did you agree to this?

DR. KEMPNER: Yes.

COLONEL NEAVE: When you read the summary and the Prosecution has time to examine the affidavit, it will be decided if the commission will acept the affidavit. You may proceed, Dr. Laternser.

DR. LATERNSER: I will give the Commission Volume 1 of the affidavits concerning the Commando Order. I wish to propose that the text concerning these affidavits be read into the record.

COLONEL NEAVE: The proposal that I made pertains to the order of the Tribun dated July 5th and that is that the defense counsel read out a summary and then submit the original document, but apparently Dr. Laternser you are proposing to do something else.

DR. LATERNSER: I wish that the summary of the entire matter appear in the record, because that is the only possible way for me to do it.

COLONEL NEAVE: It is much the better way for you to read the summary, document by document, so we will be given a chance to comment on it. What you are going to do is to put the whole of the text in the record and have it translated and then you will say something else as well in the record. I think Dr. Kempner will agree that we can read out the summary here and the Prosecution can raise any objections it desires. All you need to do is to read out the summary and when you come to the end of the summary of a particular document, I will ask the prosecution if they have any comment. If the commission is not clear as to the relevancy of the document, they will ask you and decide whether they will admit it. Is that alright with you Dr. Kempner? Let us get on with the procedure, which is the procedure laid down by the Tribunal and let us stick to that proced

DR. LATERNSER: This method will be much longer and I wanted to prevent that.

DR. KEMPNER: The procedure stated by Colonel Neave is much the best procedure, otherwise, we would not know what was in the affidavits.

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COLONEL NEAVE: The procedure has worked quite well. The first affidavit GENERAL STAFF NO. 301-A -GENERAL GARLIPANT. Will you read that, Dr. Laternser?

DR. KEMPNER: May I make a suggestion? It might be better if this is read as it stands.

COLONEL NEAVE: Will you read the summary as it is written and not paraphas it and if we are to have a discussion on it, we can have that afterwards.

DR. LATERNSER: I present this Document GENERAL STAFF NO. 301-A. Which shows the opinion against the order in the OKW and the OKH and the fruitless attempts made to prevent this order entirely.

COLONEL NEAVE: I think, Dr. Laternser, you might read the preface in this summary, which begins with the first line, the "Kommisarbefehl". Will you read the first two sentences?

DR. LATERNSER: I am just trying to think it over.

COLONEL NEAVE: Is there any possible objection to reading that in the record? It is merely explaining the affidavits concerning the Commisar order. Will you mind reading it?

DR. LATERNSER: The Kommisarbefehl is an act, which this supposed group has been accused of as being in violation of International Law and the rights of humanity. This proves clearly through the statements of witnesses before the commission, which concerned itself with the eastern and southeastern battle fields and which I will support by further affidavits about which I present the commission with a total of eighty two affidavits.

DR. KEMPNER: I draw attention to the letter on the last page.

DR. LATERNSER: I did not refer to the letter on the last page.

COLONEL NEAVE: Well, it is there and I do not know why we should not refer to it.

DR. LATERNSER: I do not present this letter as an affidavit, but as a Document and it is one of the very few special cases.

COLONEL NEAVE: You are not supposed to present documents. At the moment we are deciding upon affidavits. Do you want to withdraw that letter from the affidavit? Does that mean the Zeitzler letter is withdrawn?

DR. LATERNSER: Yes, if I cannot present it to the commission in this connection. I will have to recall it.

COLONEL NEAVE: I did not say that you should do so, I asked if you wished

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to do so. I merely stated that the purpose of this commission is to accept affidavits. I wanted to know if that letter from Zeitzler was not better in your document book.

DR. KEMPNER: This os O.K. but we reserve the right to cross-examine or put in an interrogatory.

COLONEL NEAVE: Dr. Kempner. I consider you have the right to discuss the procedure you are going to adopt on behalf of the Prosecution.

DR. KEMPNER: Especially since we have only the German original transcripts.

COLONEL NEAVE: The same applies to all affidavits. You have the right to ask that they be translated and it will be at the discretion of the commission to say.

The commission will admit this affidavit as GENERAL STAFF No 301-A

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COLONEL NEAVE: Now Affidavit General Staff No. 302-B, which is the letter from Zeitzler. You say you are going to withdraw it? Is that right?

DR. LATERNSER: Yes.

COLONEL NEAVE: May I look at it once more?

DR. LATERNSER: I recall this letter here before this commission, however, I reserve the right to present it in my document book. I only presented it in order to clear the entire complex.

COLONEL NEAVE: First of all, it is not an affidavit. It is only a letter to you and the question is whether it goes into the Document book or not.

DR. KEMPNER: Is that from General Zeitzler? Is he a prisoner of war now or what is he?

DR. LATERNSER: Yes, he is a general and he is a British prisoner of war and is in the hospital in Odenborg in Munich.

COLONEL NEAVE: Let us not waste more time. This has nothing to do

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with the proceedings of the Commission at all. Whether it goes in the Document book or not is a matter to be decided by the Tribunal. Will you go on Dr. Laternser?

DR. LATERNSER: Concerning the positions of the commanders in chief on the front, which were considered as part of this group by the prosecution, I will present the following affidavits in order to give a clear picture.

Affidavit GENERAL STAFF NO. 302 by Colonel General Hoth, which states that he did not pass on this order and therefore presented the carrying out of this order by his Panzer group.

COLONEL MEAVE: First of all, why is the affidavit not properly sworn to? It is dated June 16th?

DR. LATERNSER: Due to the long time in getting mail and the poor communications system, this affidavit is presented in the manner as requested at that time by the Tribund.

COLONEL MEAVE: It bears the signature of an allied officer. I don't know what you mean, Dr. Laternser. This is written from the prisoner of war camp at Dachau, which has been fully informed as to the order, however, if the prosecution does not object, we will let that go.

DR. KEMPNER: This is just like an affidavit.

COLONEL MEAVE: It is not certified, although it has the signature of an allied officer on it.

DR. KEMPNER: It is only signed by this man.

COLONEL MEAVE: The position is this. It is agreed that the commission should make exceptions to the order of May 9th wherein it was agreed that the affidavits were signed by an allied officer if there was some difficulty in carrying out the order, such as if the order could not be communicated.

DR. KEMPNER: So far as the contents are concerned, I have no objection. If the court is satisfied with the form, we are satisfied with it.

COLONEL MEAVE: The commission will admit this affidavit - GENERAL STAFF NO. 302.

DR. LATERNSER: I next come to Document GENERAL STAFF NO. 304 by Colonel General Guderian, at that time leader of an armored group. He states that the order was not passed on in his area and therefore it was

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not carried out.

DR. KEMPNER: We have no objections.

COLONEL NEAVE: The commission will admit this affidavit as GENERAL STAFF NO. 304.

DR. KEMPNER: Where is GENERAL STAFF NO. 303, it was passed completely?

DR. LATERNSER: No, I did not present this affidavit as it only has a certified signature.

COLONEL NEAVE: Why did you not have this affidavit submitted in the proper way. That was done in the prison here and there is no reason why it should not be presented in the proper form. The prison officials here have been fully informed as to how this should be done. Where is the witness now?

DR. LATERNSER: In England.

COLONEL NEAVE: You might like to ask Dr. Kempner about this. I would like to say at the time this affidavit was prepared the prison office here and everybody concerned was instructed as to how these affidavits should be certified. I cannot understand why, Dr. Laternser, you did not arrange for this to be done here.

DR. KEMPNER: I cannot accept this affidavit. We do not know the first name of this man and there is no proper identification.

COLONEL NEAVE: Dr. Laternser, will you speak to me about this affidavit afterwards? We will see if we can get this affidavit sworn to if you think it is important.

DR. LATERNSER: That Colonel General von Falkenhorst did not pass on the order was already proven before the court by the witness Buschenhagen, whom I questioned before the commission.

COLONEL NEAVE: Then you will not be wanting this affidavit?

DR. LATERNSER: No, I will not need it.

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DR. LATERNSER: Document GENERAL STAFF NO. 305 is next and it is by Field Marshal von Weichs, who testified that he took over the high command of the second army only ten to fourteen days after the beginning of the war. He found an order to g around the Commando order that the commandos were to be treated like regular prisoners of war. Since he was of the same opinion as his predecessors, he admitted this order and kept it in effect. That is Affidavit GENERAL STAFF NO. 305.

COLONEL MEAVE: How many more affidavits do you have on this subject?

DR. LATERNSER: I have concerning this special case 82 affidavits.

COLONEL MEAVE: And all of these affidavits relate to the same thing?

DR. LATERNSER: They are all concerned with the Commando order, but not all with the same thing.

COLONEL MEAVE: I was not clear that they all pertained to the Commando order. How many affidavits on other subjects will you present?

DR. LATERNSER: I cannot say that exactly by number.

COLONEL MEAVE: You wish to produce eighty two affidavits on this one subject?

DR. LATERNSER: I have to insist on this many documents in this case, Mr. President, for several reasons.

COLONEL MEAVE: I want to speak to Dr. Kempner. All of these affidavits ard on the Commando order. I don't know if you understood that this was the case or not. They all relate to this order.

DR. KEMPNER: We think that five affidavits are enough on this point. I glanced at them and they are all the same. Either one says he did not know of the Commando order, or he know of it and the order was sabotaged. We are not interested in details as they all followed the same trend and the people either say we did not know of the order or we sabotaged the order, which is their own defense of course.

COLONEL MEAVE: Dr. Laternser, will you wait one moment? The answer to this is quite simple, we will deal with the problem the same as we dealt with the affidavits of other organizations. The affidavits which Dr. Laternser considers asparticularly important should be given to us now by their numbers and those which he desires to have translated. The remainder

of the list will be translated and will be read into the record at a later date. That will mean that a small number of these affidavits will be summarized or completely translated and the rest will simply be listed under the heading as showing they are related to the affidavits which have been read in the record. We found that procedure successful in the case of the SS Reitersturm where a very large number of affidavits were submitted. The position is that we will adopt that procedure if Dr. Laternser will give us the numbers now of those affidavits, which he considers particularly important. I understand that there are not very many. I agree with you that there is no point in reading them all into the record if they are all on the same subject. That was what I did not understand. Will you inform us which are the affidavits which you want fully translated and any others which you particularly wish read in summary form in the record.

DR. LATERNSER: I have to state something here quite specifically since it is important for later procedure.

COLONEL NEAVE: Yes.

DR. LATERNSER: The Commissar Order did not come from the accused group that is accused of it. This group can only be accused of it, if it was carried out. I want to prove that this order was not carried out. It is not correct if it is stated that every document or affidavit, which I present, proves the same thing, because it is always something different if a different General did not carry it out.

COLONEL NEAVE: What you say is perfectly clear, but we will not admit eighty two affidavits on this same question - on the same order, excepting insofar as we are prepared to summarize or translate those to which you attach particular importance. We are prepared to list the others and show they are also on the same subject. We will naturally receive the original documents, but it is impossible in the limited time to translate or even

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summarize eighty two affidavits in principle, which are on the same subject. I think, as in the case of the SS Leitorsturm, the prosecution will possibly be able to accept your word that they are confirmatory of these particular affidavits.

Will you go on, as I ask, and tell us which are the most important of these affidavits?

DR. LATERNSER: Mr. President, can we not use the procedure which was proposed by me at the beginning of this session as we would be finished in fifteen minutes? I present all the documents to the prosecution to have them checked and my prepared speech is shown in the transcript?

COLONEL MEAVE: I think the prosecution would like to discuss in some detail those affidavits, which you actually wish to summarize for translation. That is the whole purpose of this commission, that won't take very

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long. We will then make up a list of the others, which will be forwarded to the Tribunal and the general subject of them will be recorded in the transcript. It should not take very long as I gather there are not very many that you consider should be fully translated or summarized. Will you tell us which they are?

DR. LATERNSER: I stated already in the beginning I have only three documents concerning this complex, which I wanted to have read in their entirey. However, the basic requirementsfro that is that I am alowed to give you the summary of the list of documents.

COLONEL NEAVE: I don't think we will agree to that exactly. What we want to have first is the number of documents you want fully translated. Can we have those first?

DR, KEMPNER: Can we have a short recess for five minutes so that Dr. Laternser can pick out his most important documents?

COLONEL NEAVE: I think he has them.

DR. LATERNSER: I know these documents.

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DR. LATERNSER: The Documents are GENERAL STAFF 324-A, General Staff 324B and General Staff 324C. These concern themselves with one special complex, which was given by the Russian prosecution as part of the indictment. The, Documents GENERAL STAFF 333 and GENERAL STAFF 336.

COLONEL NEAVE: Is that all?

DR, LATERNSER: That is all, however, I can only limit it to this number if I can give the other documents in the way I want them to be given.

DR. KEMPNER: We object to this procedure.

COLONEL NEAVE: This procedure will not be allowed. Will you tell the Commission which of the affidavits you would like to have summarized now and read into the record. I prefer to have the summary on the list we have here.

DR. LATERNSER: AFFIDAVITS GENERAL STAFF 306 and GENERAL STAFF 316. Both concern themselves with the same aspect. These affidavits state that Colonel General Strauss, the commander in chief of the 9th Army

did order that this Commando Order be not carried out and that commando's should be treated like other prisoners of war. That is all I have to propose concerning these two documents.

COLONEL NEAVE: We would like a summary read into the record.

DR. LATERNSER: No, these two are fininshed.

COLONEL NEAVE: The question I asked you was, are there any other affidavits which you expressly wish to have read into the record in summarized form? I am not asking you to fully translate the affidavits.

DR. LATERNSER: I want to summarize all of the dacuments the way I summarized them on this paper.

COLONEL NEAVE: The Commission will not agree to your doing that. I told you that already. You are not going to summarize 82 affidavits on the same subject, as I have already told you. What we are going to do is to fully translate some of the affidavits, to summarize a limited number of others, in addition to those we have already had, and if you qish, we will take the remaining affidavits and simply list them and forward the list to the Tribunal with the rest of them. That procedure is perfectly in accord with the Tribunal's order of July 5th, and I wish that you would adhere to it.

Is the procedure agreeable to the prosecution?

DR. KEMPNER: Yes.

COLONEL NEAVE: Will you kindly follow that procedure, Dr. Laternser and tell us whether there are any other affidavits in addition to those which have already been read, which you wish summarized and read, and state those you wish to have fully translated. You said there were four or five, and you may have a few more in addition to thos, which are to be fully translated.

DR. LATERNSER: I will give those after the recess.

COLONEL NEAVE: Let us discuss those which are fully translated. First, GENERAL STAFF 324A. Can I see that Affodavit?

The Affidavit General Staff 324A, is handed to Colonel Neave).

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COLONEL NEAVE: Would you like to submit 324A-B and C, and also 333. I think I have 324A, B and C here.

DR. LATERNSER: Yes.

COLONEL NEAVE: And 333.

DR. LATERNSER: Yes.

COLONEL NEAVE: May I have that now.

DR, LATERNSER: That is to be in a day or two.

COLONEL NEAVE: The Commission will now adjourn for a ten minute recess, but before we do that, Dr. Laternser, I would like to know that the order here which lays doen this procedure is perfectly clear, and that it gives the prosecution and the Commission the opportunity to comment on the affidavits, and I wish you would adhere to that procedure. We found it worked very well in the case of other organizations, and I don't see why it would not in this.

DR. LATERNSER: I believe we could have fininshed that with the documents.

COLONEL NEAVE: I believe that we shall be fininshed very shortly, but I wish you would adhere to that procedure. All, right, we will adjourn now for ten minutes.

(Recess)

COLONEL NEAVE: Now I have no objection to the submission of these affidavits, but before any final decision is made, I would like for the Prosecution to read them. They are not very long.

DR. KEMPNER: I have no objection against 336. No objection agaist 333.

COLONEL NEAVE: A B and C, that is, 336 has got three parts.

DR. KEMPNER: Np, that is 324.

COLONEL NEAVE: Yes, that is right.

DR. KEMPNER: I donnot quite understand 324-C. This is an affidavit by a Major Koblaue of the group.

COLONEL NEAVE: May I hear what the objection is?

DR. KEMPNER: I do not see his relationship to this hearing.

DR. LATERNSER: In order to clarify this I can say the following/

COLONEL NEAVE: Wait a minute. The objection is that this Major is not in the group of the general staff. Any person can give evidence on

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behalf of an organization, whether or not he is technically a member under the indictment.

DR. KEMPNER: Under this evidence we have no objection.

COLONEL NEAVE: Therefore, I will hear from Dr. Laternser.

DR. LATERNSER: I say that these documents are to the contrary as evidence against document YSSR 62, which was presented by the Russian Prosecution.

COLONEL NEAVE: Then they seem to be entirely relevant and they will, therefore, be translated nd distributed to the Tribunal Now the next question I'll ask you is whether you had any other affidavits which summaries you especially want to read into the record. You said 306 and 316.

DR. LATERNSER: Yes.

COLONEL NEAVE: Would you like to read the summary of General Oberst Strauss?

DR. LATERNSER: I am willing to, but I read it.

COLONEL NEAVE: Is that so. He read 306?

DR. LATERNSER: Yes.

COLONEL NEAVE: What about 316, you have not read that?

DR. LATERNSER: The statement of Major Beckmann supports the statement of Colonel General Strauss, and not document 306.

COLONEL NEAVE: Have we got the original? Now are there any others you wish to read into the record in summary form?

DR. LATERNSER: Affidavits 307, 308, 309, and 310.

COLONEL NEAVE: Any others? You are not reading a whole list?

DR. LATERNSER: Yes, and 311.

COLONEL NEAVE: I want those which are of particular importance, and to which you wish to draw the particular attention of the Judges; any you want to summarize.

DR. KEMPNER: There is one affidavit, 306, in that the man tells clearly what he thinks about these affairs. Then we have additional affidavit in there where the officer tells of the officer number one and quotes him so. I think that is really overlodding the record. If we have to have the affidavit of one man to tell us the man who gave this affidavit "Told me so", that is then that the witness is to say

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that or the affidavit, and not the two.

COLONEL NEAVE: In practice, Dr. Kempner, you see we have only got a very brief summary here under 306, and under 316, and they have had it read for the record. On that condition I don't think there is any point in ruling out 316, if Dr. Kempner wishes to put it in.

DR. LATERNSER: Document No. 307, is of Colonel General Lindemann, who stated he did not receive an order, and, therefore, did not carry it out. That is the entire contents.

COLONEL NEAVE: That is considered particularly important?

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DR. LATERNSER: Yes.

COLONEL NEAVE: Is there any question here as to whether Dr. Laternser should read the summary stated in this case read into the record?

DR. KEMPNER: We have no objection. It is accumulative but we have no objection.

COLONEL NEAVE: I think the question of cumulative evidence has already been discussed before in this Commission. We have got to allow the defense as wide and representative a field as possible, but we must avoid actual repetition. Now in this particular case I think this affidavit is of some interest, provided this is the only one that we read into the record in which he states exactly this fact, but he did not receive the order so he did not carry it out. So Dr. Laternser you read your summary at the top of page 2 of the affidavit.

DR. LATERNSER: I have done that already.

COLONEL NEAVE: Has he read it? He has not read the full text, has he?

DR. LATERNSER: I even summarized this text.

COLONEL NEAVE: That is what I want, I want what you have written down read. Will you please do it.

DR. LATERNSER: Colonel General Lindemann at the beginning of the campaign was the commanding general of the 50th Korps, did not receive this order since he was in OKH reserve position with his division, and, therefore, did not carry it out when later committed to battle. That is document 306.

COLONEL NEAVE: Will you do as I have asked you two or three times. Will you always read what is written in this text, and if there are any further discussions, why, we can have that afterwards. Dr. Kempner has requested that should be done, and I don't see any reason why it should not. Then the affidavit is admitted, as General Staff 307. Now are there any other summaries you wish to read into the record?

DR. LATERNSER: Affidavit 308.

COLONEL NEAVE: How many more of these affidavits will you want to read into the record, in summary form?

DR. LATERNSER: In this case I shall go along according to the wishes of the court.

COLONEL NEAVE: You mean to say you can not tell me of any others you want to read? I am giving you an opportunity to do that, but in a very limited number.

DR. LATERNSER: Then Affidavit 308, which is by Field Marshall von Kuehler.

COLONEL NEAVE: In this case he did not receive the order, also.

DR. LATERNSER: Yes.

COLONEL NEAVE: That is exactly what 307 says.- I just told you there should be no more affidavits on this question of whether the General received the order and did not carry it through.

DR. LATERNSER: Yes.

COLONEL NEAVE: That is exactly what 307 says - that is what this document says.

COLONEL NEAVE: It is not what it says.

DR. LATERNSER: That is what the document says.

COLONEL NEAVE: Yes. Go on to the next one.

DE. LATERNSER: Affidavit 309. General von Knobelsdorff. General of the armored corps, von Knobelsdorff was at that time commander of the 19th Armored Division, and until the order had been presented by Hitler, Commanding General of the 10th and 2nd Armored Corps prohibited the carrying out of this order and took the responsibility for that. He certifies that the same procedure was used in areas of four general commands, and nineteen divisions.

COLONEL NEAVE: Well, you have heard the summary of that. Do you have any views on that?

DR. KEMPNER: No objection.

COLONEL NEAVE: Now are there any others. I don't see any point in taking up many more unless they raise particularly a different aspect. Would you just let myself and the Prosecution read through these lists, and see if anything they would like their

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attention drawn to. (Looks at the list) I cannot see anything else.

DR. LATERNSER: Nos. 311 and 317, which concern themselves on one point.

COLONEL MEAVE: Wait one minute. Have you any comment on this, Dr. Kempner. You have heard it read in German, so do you have any objection to it being read into the record. If there is any objection, then we will strike the German from the record.

DR. KEMPNER: No, it is just another document saying that maybe no one was killed, anyhow.

COLONEL MEAVE: Well, translate it.

DR. LATERNSER: The action of the dead Field Marshall von Kluege at that time commanding chief of the 4th Armor, and that of the Field Marshall von Bock, who died in action, and who was at that time commander in chief of the Armored group Mitte, is proved by the statement of the commander of the 4th Armored at that time, general of the infantry Blumentvitt. This is affidavit 311. Both commander in chiefs did not approve of this order, and forbade it carried out. That is underlined by the statement by affidavit No. 317. From this it is evident that both commander in chiefs attempted to find ways even though they were not successful to bring about an order from Hitler rescinding this decree.

COLONEL MEAVE: We will admit this. I think it is sufficient. Let's take the final summaries of the many statements regarding affidavits that have been read and have admitted -- in other words, let's finally decide what affidavits we have read and have admitted. The first one I have is 301 - just correct me, Dr. Laternser, if I am mistaken.

DR. LATERNSER: Yes.

COLONEL MEAVE: 303 is withdrawn.

DR. LATERNSER: Yes.

COLONEL MEAVE: 304.

DR. LATERNSER: Yes.

COLONEL MEAVE: What happened to 305. I have 305.

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DR. LATERNSER: Yes.

COLONEL NEAVE: 306 and 316.

DR. LATERNSER: Yes.

COLONEL NEAVE: 307.

DR. LATERNSER: Yes.

COLONEL NEAVE: 309. The next one is 311.

DR. LATERNSER: That is correct.

COLONEL NEAVE: And 317.

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DR. LATERNSER: Yes.

COLONEL NEAVE: I mentioned 316, didn't I?

DR. LATERNSER: Yes.

COLONEL NEAVE: Yes, they are together, 306 and 316. 324 A, B, and C. to be fully translated. 336 to be fully translated and 333 to be fully translated.

DR. LATERNSER: Yes.

COLONEL NEAVE: Now with regard to the remaining affidavits, the Commission will be prepared to admit these affidavits in their original form, but I would like you to submit lists with the numbers and the names of the witness, and a shortheading as to their contents, but not a complete summary. If you think that is necessary merely to identify the document. Will you agree doing that?

DR. LATERNSER: Yes.

COLONEL NEAVE: Havy you any comments, Dr. Kempner?

DR. KEMPNER: No.

COLONEL NEAVE: Now when will you be ready to present more affidavits, on the general staff?

DR. LATERNSER: I could present some more. However, they are all prepared in the same manner as the affidavits for the Kommissars decree.

COLONEL NEAVE: I think we have to treat them in the same way. Would you prefer to do that now, or would you like to reorganize these summaries?

DR. LATERNSER: I believe we will have to change it a little bit, after the way it has been done up to now.

COLONEL NEAVE: Dr. Kempner, do you have any suggestions to make as to a different way of doing this, if you really are having affidavits on one particular point anyway. What in practice the Commission has done here is to admit about fifteen or twenty affidavits on this subject, but the list is about sixty. Have you any suggestions, you wish to make dealing with the next lot of affidavits. Before you answer, could Dr. Laternser explain what point he is making on these.

DR. KEMPNER: How many topics are really still to be presented. I would like to know.

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DR. LATERNSER: I have about eight to ten more themes, more points on which I would like to present documents.

COLONEL NEAVE: Roughly how many affidavits on each point?

DR. LATERNSER: Concerning all of these points, there will be surely three-hundred. I will treat the other points the same way as the Commissioner's order was dealt with today.

COLONEL NEAVE: In the opinion of the Commission I believe with the prosecution that it is a far better way of doing it as was done today. As a result we'll have the most important affidavits fully translated, those to which you wish to give special attention in summaries, such forms before read into the record, and the remainder are simply as being on the same subject. As a matter of fact when you submit lists of affidavits which have not as yet been read into the record, I don't see any reason why you should make a short statement as to what they contain; by way of recognition what they support or affirm of the evidence in those that have been read before the Commission, I don't think the prosecution would object to that, would they?

DR. KEMPNER: No.

COLONEL NEAVE: Are you ready to follow that procedure or not? When will you be ready to continue in the form that has been suggested? Will you be ready Friday?

DR. LATERNSER: Yes.

COLONEL NEAVE: Now Dr. Laternser has stated that six to ten different points he wishes to make. He has mentioned three-hundred affidavits, and it is clear that we shall not be able to admit all three-hundred, or at any rate not to read into the record all three-hundred, even in a summarized form. So I think that if he wants to ask for, say two or three to be fully translated for each point, and have five or six to be read into the record in summarized form, would he please offer us a summary in this form on the next occasion, and read from thissummary, - only from this summary. We should get along quite quickly, then, and the remainder, of course, would be simply listed in the way I have suggested, with the form of statement by the defense counsel that the remaining affidavits, which would have numbers,

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of course, simply support or affirm theevidence that has been read. What I want to point out is the reason whcy I objected to your original plan. I wanted to make the transcript clearer, and also I don't want to summarize all these affidavits on the same point. It would have taken a long time to translate them, even if that was done downstairs by the translation department, and not up here, and also, it would not have served the pruposes of this hearing which is to give the prosecution the opportunity to actually see and to comment on the affidavits in front of the Commissioners, and that the transcript of arguments that are raised should then be forwarded to the Tribunal. That is the whole purpose of this Commission. Have you anything more to say?

DR. LATERNSER: I have nothing more to say.

COLONEL NEAVE: But you will agree to that procedure?

DR. LATERNSER: Yes.

DR. KEMPNER: Yes, we agree and ask that also the defense will adhere to it.

COLONEL NEAVE: We will adjourn now until two o'clock when we will take up the Political Leaders.

(The Commission adjourned until 16 July 1946 at 1400 hours).

The foregoing is a true and correct transcript of Affidavits submitted by DR. LATERNSER, taken on 16 July 1946.

Alice Meehan
Reporter

Charles J. Gallagher
Reporter

CERTIFIED TO:

A. M. S. Neave
Commissioner